

## REMARKS

### Status of the Claims

In the Office Action, claims 1-41 were noted as pending in the application. Claims 1 and 13-23 are withdrawn. Claims 2-12 and 24-41 are rejected.

#### A. Summary of Cited References

Before addressing the Examiner's rejections, a brief summary of the cited references is provided.

##### U.S. Patent number 6,272,150 to Hrastar, et. al. ("Hrastar")

Hrastar relates to recording and collecting the installed locations of cable modems in a cable data network. Abstract. Software manages a database of installation and status information. Id. Responsive to a request, the software provides the installation and status information to a network manager. Id. The information is displayed as a map showing the topology of a cable modem's location in the network with respect to other modems and components of the network. Id.

#### B. Rejection of Claims 1, 5-8 and 17 under 35 U.S.C. § 102(e).

On page 2 of the Office Action, claims 2-4, 7-10, 24, 27-28, 30-32, 35, 38-39 and 41 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hrastar. The reasons that the claims patentably distinguish over the reference are addressed below.

Claim 2 recites "... compiling a table of information related to a plurality of user devices connected to the network, said table configured for associating multiple samples of network performance data, wherein each of the samples corresponds to one of the user devices, with an identifier of the user device to which each said sample of performance data corresponds . . . ." As discussed above, Hrastar discusses that a database is maintained that includes information related to physical and logical locations of a cable modem, and that the locations may be displayed on a map showing the topology of the network. Examiner has not pointed to, and Applicant cannot find, a discussion in Hrastar of a database that contains performance data of individual cable modems. As described in the specification, performance data corresponds to QAM symbols. QAM symbols have an I and Q component as known in the art. Essentially, multiple samples of the QAM symbols transmitted and received during a sample period are the performance data. Thus, the performance data comprising multiple samples of QAM symbols can be plotted on an I and Q constellation chart, or map.

In contrast, the Hrastar reference discusses a process statistics table that contains information regarding the network devices, including process identifier, process description, number of users, at a given time, etc. Col. 20, lines 60-67. Screen shots shown in FIGS. 13-17 show logical connections of network elements and illustrate how their status may be displayed. Col. 21, line 1 – col. 22, line 31. This section of the Detailed Description of the Preferred Embodiment restates the text at col. 3, lines 30-42, which is the section cited by Examiner. The cited reference does not show that samples of QAM data are combined into a plot and then transmitted to a remote location. Thus, all of the recited elements of claim 2 are not found in the cited reference.

Since collection of performance data as claimed and described in the specification of the present application is not discussed in Hrastar, collecting and assembling

performance data into packets is also not discussed in the reference. Column 19 of Hrastar discusses polling management information base entries to determine various statistics. The cited portion of the reference does not discuss collecting and assembling performance data into packets. Thus, it follows that the steps of sending, receiving, mapping generating and presenting the packets and performance data contained therein, are also not found in the reference. Accordingly, since all of the elements of claim 2 are not found in the reference, the reference does not anticipate claim 2. Withdrawal of the rejection is respectfully requested. In addition, Examiner rejects independent claims 24 and 35 for reasons similar to those used in the rejection of claim 2. Thus, based on the above discussion, claims 24 and 35 also distinguish over the reference. Withdrawal of the rejection is respectfully requested. Claims 3-4, 7-10, 27-28, 30-32, 38-39 and 41 depend from one of the independent claims discussed above. Thus, they too are not anticipated by the reference. Withdrawal of the rejection is respectfully requested.

**C. Rejection of claims**

On page 4 of the Office Action, claims 5-6, 11-12, 25-26, 29, 33-34, 36-37 and 40 are rejected as being obvious over Hrastar in view of Official Notice. The reasons that the claims patentably distinguish over the reference are addressed below.

**D. The Claims are not Obvious over the Cited References**

Applicant respectfully submits that the subject matter of the claims patentably distinguish over the cited references. Under MPEP § 2142, for an examiner to establish a *prima facie* case of obviousness, “three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant’s disclosure.” If any of these three criteria are not met, the Examiner has not met the burden of establishing a *prima facie* case of obviousness, and the rejection should be withdrawn.

Furthermore, each dependent claim includes all of the limitations of the independent claim from which it depends. If an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. MPEP §2143.03, citing In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Applicant respectfully submits that the burden of establishing a *prima facie* case of obviousness has not been met.

**E. Claims are not obvious over the cited references**

The claims analyzed above in section B are independent claims and they patentably distinguish over the references as discussed above. All of the other rejected claims depend from these independent claims and therefore contain all of the limitations contained in their respective base claims. Accordingly, under MPEP §§2142 §2143.03, these dependent claims also patentably distinguish over the references and withdrawal of the rejection is respectfully requested.

In addition, with respect to claims 5, 25 and 36, as discussed above, Hrastra does not disclose performance data as being I and Q samples that correspond to QAM symbols. Thus, all of the elements of the rejected claims are not found in the cited references, either alone or in combination.

Furthermore, there is not a suggestion to combine references to arrive at the claimed subject matter because there is no teaching of combining the I and Q values for the symbols transmitted and/or received during a given period to form performance data that is then transmitted in packets. Examiner takes Official Notice that QAM modulation and constellation plots are known in the art because Applicant stated that such are known in the art. While constellation plots may be known, Applicant did not state that the plotting of multiple samples of QAM data, i.e., performance data, on a plot was known. Moreover, Applicant did not state that the collecting and assembling of performance data at each of a plurality of user devices and sending such data to a remote location wherefrom a request for such performance data was requested was known in the art at the priority date of the present application. Therefore, there is no suggestion to combine the cited reference with the statement in the application. Applicant did not state that the claimed elements are known and thus Official Notice that knowledge or constellation plots generally cannot be taken. Withdrawal of the rejection is respectfully requested.


#### SUMMARY

For all the reasons advanced above, Applicant respectfully submits that the application is in condition for allowance and that action is earnestly solicited.

If the Examiner believes that there are any issues that can be resolved by a telephone conference, or that there are any informalities that can be corrected by an Examiner's amendment please contact the undersigned at the mailing address, telephone, facsimile number, or e-mail address indicated below.

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Respectfully submitted,  
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